

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

|                                  |   |                          |
|----------------------------------|---|--------------------------|
| STE. GENEVIEVE COUNTY LEVEE      | ) |                          |
| DISTRICT #2,                     | ) |                          |
|                                  | ) |                          |
| Plaintiff,                       | ) |                          |
|                                  | ) |                          |
| vs.                              | ) | Case No. 4:06CV00406 ERW |
|                                  | ) |                          |
| LUHR BROTHERS, INC.,             | ) |                          |
|                                  | ) |                          |
| Defendant/Third-Party Plaintiff, | ) |                          |
|                                  | ) |                          |
| vs.                              | ) |                          |
|                                  | ) |                          |
| UNITED STATES OF AMERICA,        | ) |                          |
|                                  | ) |                          |
| Third-Party Defendant.           | ) |                          |

**MEMORANDUM AND ORDER**

Currently before the Court is Third-Party Defendant United States of America's Motion for Judgment on the Pleadings [doc. #5].

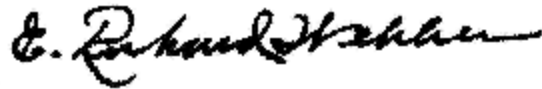
"If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." Fed. R. Civ. P. 12(c). The United States has not presented any matters outside the pleadings, either in its original Motion and Memorandum in Support or in its Reply Memorandum. However, in opposing the Motion, Defendant and Third-Party Plaintiff Luhr Brothers, Inc. ("Luhr Brothers") attached several exhibits which constitute

matters outside the pleadings.<sup>1</sup> Moreover, in its Reply, the United States references an exhibit presented by Luhr Brothers. Because the Court has determined that it will not exclude these items presented by Luhr Brothers, the Court hereby places the parties on notice of its intention to treat the United States' Motion for Judgment on the Pleadings as a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56. So that the parties have a reasonable opportunity to present all material pertinent to such a motion, the Court will give the parties additional time in which to supplement the record.

Accordingly,

**IT IS HEREBY ORDERED** that the Court will treat Third-Party Defendant United States of America's Motion for Judgment on the Pleadings [doc. #5] as a motion for summary judgment. Any party desiring to supplement the record with additional material pertinent to a motion for summary judgment shall do so within **TWENTY (20)** days of the date of this Order.

Dated this 22nd day of June, 2006.



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E. RICHARD WEBBER  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup>These include (1) the underlying contract at issue in this case; (2) a letter from Brenda Wynne-George, contracting officer for the Army Corps of Engineers; (3) the deposition of Mark Miller, an employee of Luhr Brothers; and (4) the deposition of William Gardner, an employee of Luhr Brothers.